

#4

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FAX RECEIVED

Applicant(s): Tommy Leon Myatt

Serial No.: 09/610,196

Filed: July 5, 2000

For: HAIR STYLING BRUSH WITH
REVERSE AIR FLOW

Group No. 3742

Examiner: Daniel Leon Robinson

Att'y Dkt. No. 5300-001

MAR 08 2002

GROUP 3700

BOX DAC

Commissioner for Patents

Washington, D.C. 20231

ATTN: OFFICE OF PETITIONS

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PETITIONS OFFICE

PETITION TO WITHDRAW ABANDONMENT

On February 26, 2002, a Notice of Abandonment was mailed in the above application. The reason for abandonment stated in the Notice was that Applicant filed no reply in response to the Office letter mailed August 2, 2001. Applicant will show that a fully responsive reply was submitted to the Office action. Alternately, Applicant will show that at least a bona fide attempt was made to respond. Accordingly, Applicant petitions the Office to withdraw the abandonment of this application as improper.

On August 2, 2001, an Office action was mailed in this case. The action was directed solely to a restriction requirement. This undersigned attorney received the action on

CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. § 1.8(a)

I hereby certify that, on the date shown below, this correspondence is being sent by facsimile transmission to the Office of Petitions at facsimile number 703-308-6916.

Date: March 6, 2002

Signed:

Mary M. Lee, Attorney for Applicant

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640.00 DA

06/09/2004 AKELLEY

01 FC:2453

August 6, 2001. A copy of the date-stamped cover sheet (Form PTO-90C) of the Office action is enclosed.

On August 20, 2001, at approximately 8:46 a.m. the undersigned telephoned the Examiner. During this brief telephonic interview, the undersigned advised the Examiner that Applicant would elect Group I (claims 1-7) without traverse. The Examiner accepted the oral election and indicated it would be reflected in the next Office action on the merits.

The enclosed copy of the Office action cover sheet shows the undersigned's notation of the telephonic interview made contemporaneously with the call. In addition, a copy of the undersigned's telephone bill (in relevant part) for August 2001 is enclosed. The charge for the call to telephone number 703-306-9043 – the Examiner's direct dial number – is highlighted. No further action was received by the undersigned until February 20, 2002.

On February 20, 2002, the Examiner extended the courtesy of contacting the undersigned by telephone to inquire as to whether abandonment of the case was intended. This was the undersigned's first knowledge that the oral election had not been accepted. However, by this date, it was too late to file a written response, even with the maximum extension of time. (The 6-month deadline from the mailing date of the Office action was February 2, 2002.) The Notice of Abandonment followed.

Applicant submits that the oral response in the telephonic interview of August 20, 2001, was a complete and acceptable response to the Office action. There is no absolute requirement that an applicant submit all responses to all Office actions in writing. Indeed, oral responses to restriction requirements are encouraged. See Section 812.01 of the Manual of Patent Examining Procedure ("MPEP"). Even when a restriction requirement is made in a

written Office action, an election may be made orally. As stated in the MPEP at Section 714.04 regarding telephonic interviews:

... It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, *unless the examiner indicates he or she will do so*. It is the examiner's responsibility to see that such a record is made. ... *Discussions regarding only procedural matters*, directed solely to restriction requirements for which interview recordation is otherwise provided for MPEP Section 812.01, or pointing out typographical errors in Office action or the like, *are excluded from the interview recordation procedures*. Where a complete record of the interview has been incorporated in an examiner's amendment, it will not be necessary for the examiner to complete an Interview Summary form. (emphasis supplied)

Even if the oral election by the undersigned were somehow defective, it was at least a bona fide attempt to respond. As provided in 37 C.F.R. 1.135 (c):

When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.


In such cases, the examiner should have followed the procedures set out in Section 714.03 of the MPEP. For example, instead of simply accepting the oral election and failing to enter it and then abandoning the application, the Examiner could have "notified the applicant that the reply must be completed within the period for reply to avoid abandonment."

Based on the foregoing, Applicant requests that the abandonment be withdrawn and the oral election be entered. Alternately, Applicant requests that the abandonment be withdrawn, that the oral election be treated as bona fide but incomplete response under 37 C.F.R. § 1.135, that the time to respond be extended, and that the written restriction response submitted herewith be entered.

Finally, the undersigned acknowledges her own failure to follow up on the oral election. The undersigned's routine docketing procedures provide that, where an oral reply is made to an Office action, the deadline for the response is not cleared until entry of the response

is confirmed (usually in the next Office action) or a status inquiry is submitted prior to the expiration of the initial 6-month deadline. However, due to inadvertence, the response deadline in this case was erroneously cleared. Accordingly, in the event this Petition is denied in its entirety, Applicant alternately petitions to revive the application as unintentionally abandoned. A petition to revive (Form PTO/SB/64), a written response, and the requisite fee are submitted herewith.

Respectfully Submitted,



Mary M. Lee, Reg. No. 31,976

ATTORNEY AT LAW

3441 W. Memorial Road, Suite 8

Oklahoma City, OK 73134-7000

Tel. No.: (405) 302-0900

Fax No.: (405) 302-0901


**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

 Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/610,196 07/05/00 MYATT

T 5300-001

EXAMINER

 023547
MARY M LEE, P.C.
3441 W. MEMORIAL ROAD
SUITE 8
OKLAHOMA CITY OK 73134

GM02/0802

ART UNIT

PAPER NUMBER

 0742
DATE MAILED:

06/02/01

9-2-01 Response

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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PATENTING OFFICE

8:45⁴ 8/20/01 talked to exam. elected Group I,
claims 1-7 w/o traverse.

 Law Office
MARY M. LEE, P.C.

 R AUG 6 2001 D
RECEIVE



August 26, 2001

Account Number: 110 005785001

MARY M LEE, PC
 3441 W MEMORIAL RD
 STE 08
 OKLAHOMA CITY, OK 73134-7000-08

Page 1 of 7

Previous Balance	Payments Received	Adjustments	Current Charges	Total Due	Due By
\$321.26	\$-321.26	\$0.00	\$285.28	\$285.28	ON RECPT

Current Charges as of August 26, 2001

Total Cox Digital Telephone Service	247.26
Total Taxes and Surcharges	38.02
Total Current Charges	\$285.28

Questions?

Business Services: (405)600-6333

On-line: www.cox.com/okc**About Your Account**

Thank you for being a Cox Communications customer!

What's New From Cox

If you have questions concerning your Business Services account, please call (405)600-6333.

AUG 30 2001

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MAR - 6 2002

NATIONAL CITY



6400 0020 XW RP 01 234 01 NNNNNNN

August 26, 2001

Account Number: 501 6110 005785001

MARY M LEE, PC

Page 5 of 7

Cox Digital Telephone Service continued

Call Detail for 405-302-0900

Cox Long Distance

Date	Time	Place	Number	Rate/Time	Min:Sec	Amount
July 26	11:19A	ALEXANDRIA, VA	703-308-9300	DD/D	7:36	\$0.76
July 26	11:57A	ENID, OK	580-249-9456	DD/D	0:24	\$0.04
August 9	03:26P	ALEXANDRIA, VA	703-308-9110	DD/D	2:06	\$0.21
August 13	11:49A	AUSTIN, TX	512-899-4913	DD/D	1:00	\$0.10
August 15	10:27A	DENVER, CO	303-893-1222	DD/D	1:54	\$0.19
August 15	01:12P	PAULS VLY, OK	405-238-9556	DD/D	0:30	\$0.05
August 16	09:06A	ALEXANDRIA, VA	703-305-8747	DD/D	0:48	\$0.08
August 16	09:11A	ALEXANDRIA, VA	703-308-9500	DD/D	6:24	\$0.64
August 16	04:22P	AIRLINE, TX	281-847-5555	DD/D	1:12	\$0.12
August 17	10:38A	AIRLINE, TX	281-847-5555	DD/D	10:54	\$1.09
August 17	11:50A	TULSA, OK	918-592-9372	DD/D	1:06	\$0.11
August 17	12:31P	ALEXANDRIA, VA	703-306-9043	DD/D	0:12	\$0.02
August 20	08:48A	ALEXANDRIA, VA	703-306-9043	DD/D	1:12	\$0.12
August 20	10:48A	ALEXANDRIA, VA	703-308-9101	DD/D	2:06	\$0.21
August 21	11:32A	ENID, OK	580-554-4971	DD/D	0:12	\$0.02
August 21	11:32A	WAUKOMIS, OK	580-758-1404	DD/D	1:12	\$0.12
August 21	11:35A	ENID, OK	580-541-6167	DD/D	1:48	\$0.18
August 22	11:58A	TUCSON, AZ	520-901-2670	DD/D	10:48	\$1.08
August 22	01:18P	ALEXANDRIA, VA	703-308-9102	DD/D	1:30	\$0.15
August 24	03:01P	ALEXANDRIA, VA	703-305-3028	DD/D	4:30	\$0.45

Total Cox Long Distance \$5.74

Call Detail for 405-302-0903

Cox Long Distance

Date	Time	Place	Number	Rate/Time	Min:Sec	Amount
August 21	03:05P	MALIBU, CA	310-456-3812	DD/D	5:42	\$0.57

Total Cox Long Distance \$0.57

Call Detail for 405-302-0904

Cox Long Distance

Date	Time	Place	Number	Rate/Time	Min:Sec	Amount
July 26	11:27A	ENID, OK	580-249-9456	DD/D	0:36	\$0.06
August 8	03:57P	TULSA, OK	918-582-3176	DD/D	3:42	\$0.37
August 21	03:04P	MALIBU, CA	310-456-7256	DD/D	0:36	\$0.06
August 24	11:25A	BELLEVUE, WA	425-635-7031	DD/D	1:24	\$0.14

Total Cox Long Distance \$0.63

PTO/SB/64 (10-01)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)
5300-001

First named inventor: Tommy Leon Myatt

Application No.: 09/610,196

Art Unit: 3742

Filed: 07/05/2000

Examiner: Daniel Leon Robinson

Title: HAIR STYLING BRUSH WITH REVERSE AIR FLOW

Attention: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

MAR - 6 2002

PETITIONS OFFICE

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee☒ Small entity-fee \$ 640.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))**2. Reply and/or fee****A. The reply and/or fee to the above-noted Office action in
the form of Amendment and Response to Restriction Requirement (identify type of reply):**

- ☐ has been filed previously on _____
☒ is enclosed herewith.

B. The issue fee of \$ _____.

- ☐ has been paid previously on _____
☐ is enclosed herewith.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

PTO/SB/64 (10-01)

Approved for use 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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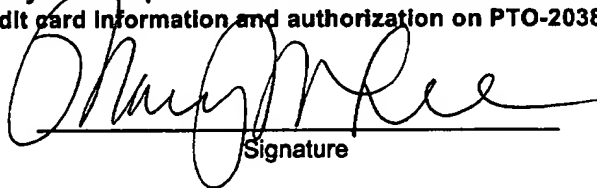
3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

March 6, 2002
Date


Signature

Telephone
Number: (405) 302-0900

Mary M. Lee, Reg. No. 31, 976
Typed or printed name

3441 W. Memorial Road, No. 8
Address

Enclosures: ☒ Fee Payment

Oklahoma City, OK 73134-7000

☒ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☒ Other: Request to Withdraw/Abandonment

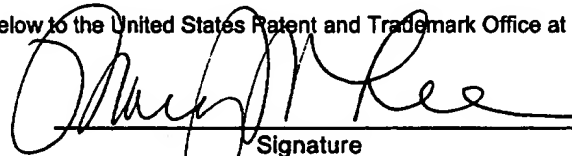
CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231.

☒ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

March 6, 2002
Date


Signature

Mary M. Lee, Attorney for Applicant
Type or printed name of person signing certificate

LAW OFFICE
MARY M. LEE, P.C.
3441 W. MEMORIAL ROAD, SUITE 8
OKLAHOMA CITY, OK 73134-7000
PHONE (405) 302-0900
FAX (405) 302-0901
E-MAIL: MML@MARYMLEE.COM

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FACSIMILE TRANSMITTAL

Date: March 6, 2002

To: BOX DAC
OFFICE OF PETITIONS
United States Patent & Trademark Office

Fax No.: (703) 308-6916

From: Mary M. Lee

My File No.: 5300-001

Re: U.S. Patent Application Serial No. 09/610,196
HAIR STYLING BRUSH WITH REVERSE AIR FLOW

Pages Including Cover Sheet: 13

Comments:

Please see attached.

_____ The original of this correspondence will follow.

 X No original of this correspondence will follow.

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